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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Assessment of Presubscribed )  
Interexchange Carrier Charges )  
on Public Payphone Lines )

96-262

CCB/CPD No. 98-34

**REPLY COMMENTS OF ONCOR COMMUNICATIONS, INC.**

Operator Communications, Inc. d/b/a Oncor Communications, Inc. (Oncor), by its attorneys, hereby submits its reply comments in this matter. This proceeding was initiated by the Commission's issuance of a public notice following the receipt of several letters which had been filed with the Commission. Each of those letters brought to the Commission's attention certain objectionable aspects of the manner in which most of the major price cap-regulated local exchange carriers have elected to implement the Presubscribed Interexchange Carrier charge (PICC) on access lines connected to public payphones. Oncor, an interexchange carrier which provides operator-assisted long distance calling services (often referred to as 0+ services) from LEC payphones was one of the companies whose letters on this subject were noted in the Commission's public notice.<sup>1</sup> Oncor also was one of the parties which submitted initial comments in this proceeding on May 26, 1998.

Commenting parties in this proceeding fall into two categories. Those incumbent LECs filing comments generally have asserted that they have a right to assess PICC charges on all of their payphone lines; that those charges should be assessed on the interexchange carrier presubscribed to

<sup>1</sup>Public Notice - Commission Seeks Comment on Specific Questions Related to Assessment of Presubscribed Interexchange Carrier Charges on Public Payphone Lines, DA 98-845, released May 4, 1998.

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each payphone for 0+ calling; and that they should be free to charge \$2.75 -- the maximum PICC charge for multiline business lines contemplated by the Commission's access charge rules.<sup>2</sup> Commenters opposing the LECs, including Oncor, generally asserted that the Commission's access charge rules do not contemplate imposition of PICC charges on payphone lines, that if PICC charges are to be assessed on payphone lines then they should be imputed to the LECs' payphone units; that if PICC charges are to be assessed on presubscribed IXCs that they should be imposed on the presubscribed 1+ carriers rather than the presubscribed 0+ carriers, and that payphone lines are not multiline business lines and should not be assessed the multiline business line rate.<sup>3</sup>

Nothing in the comments filed provides any basis for concluding that the Commission's rules require or even contemplate assessment of PICC charges on payphone lines. Neither is there any basis for assessment of a multiline business line charge on payphone lines which do not fit within any generally recognized definition or understanding of multiline business lines. Several contentions raised by LEC commenters do warrant specific refutation.

Several LECs, including, *e.g.*, Ameritech, make the curious policy argument that precluding recovery of PICC charges from payphone lines would somehow "inflate" charges on other subscriber lines because "residual common line costs . . . would be divided by too few subscriber lines."<sup>4</sup> This argument suffers from two fundamental flaws. First, whether or not such a revenue shortfall as alleged by Ameritech could be shown to exist is irrelevant to the fact that neither Section 69.153 of

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<sup>2</sup>LEC commenters include Ameritech, Bell Atlantic, BellSouth, GTE, Southern New England Telephone, and SBC.

<sup>3</sup>Other commenters opposing the LECs on these issues include AMNEX, MCI, ClearTel, and One Call Communications.

<sup>4</sup>Ameritech comments at 2.

the Commission's rules nor the language of the Commission reports and orders adopting changes to the access charge rules (including PICC charges) contain any requirement that PICC charges are to be assessed on payphone lines. Indeed, as MCI noted,<sup>5</sup> Section 69.153(a) and (b) read together clearly impose PICC charges on "subscribers"<sup>6</sup> presubscribed carriers -- a term used synonymously in that rule with the term "end user."<sup>7</sup> A premises owner selecting the 0+ long distance carrier pursuant to premises owner presubscription,<sup>8</sup> is neither a subscriber nor an end user under any generally understood definitions of those terms. As Oncor itself discussed in its comments, the Commission's report and order adopting the access charge reform rules, including the PICC charge, provides no language indicating that the Commission intended IXCs providing 0+ service from public payphones to be subject to PICC charges. Indeed, Oncor pointed out that the Commission carefully couched its discussion of PICC charges with specific references only to 1+ dialing.<sup>9</sup> Second, the Commission established maximum permissible levels for PICC charges based on its understanding of the number of lines which would be subject to those charges. Since it is clear that the Commission did not articulate any intent whatsoever to subject payphone lines to PICC charges, its calculations which led to the \$0.53, \$1.50, and \$2.75 levels must have been based on those presubscribed residential, single line and multiline business lines which were intended by the Commission to be subject to PICC charges.

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<sup>5</sup>Comments of MCI at 3.

<sup>6</sup>47 C.F.R. § 69.153(a).

<sup>7</sup>47 C.F.R. § 69.153(b).

<sup>8</sup>See United States v. Western Electric Co., Inc. 698 F. Supp. 348 (D.D.C. 1988).

<sup>9</sup>Comments of Oncor at 5-6.

Several commenting LECs, including, e.g., SNET and Bell Atlantic,<sup>10</sup> argue that IXC's serving public payphones on a 0+ basis should be assessed the PICC charge applicable to multiline business customers and, in support of that assertion, refer the Commission to its Payphone Reclassification Order<sup>11</sup> where the Commission stated that multiline business subscriber line charges are to be applicable to subscriber lines which terminate at both LEC and competitive payphones.<sup>12</sup> Apparently, those LECs are attempting to argue by analogy that since multiline business line subscriber line charges are to be assessed upon LEC and non-LEC payphone providers whose subscriber lines are terminated at payphones, that somehow warrants imposition of the multiline business line PICC rate on the IXC's who are the 0+ presubscribed carriers for those payphones. This analogy is flawed. The Commission's own stated purpose for the treatment of subscriber line charges for payphone lines is to "avoid discrimination among payphone providers."<sup>13</sup> That is, the Commission quite properly sought to avoid favoring LEC payphone providers *vis-a-vis* non-LEC payphone providers. No such nondiscriminatory objective could possibly be achieved by imposition of PICC charges on presubscribed 0+ IXC's.

Moreover, the Commission's stated policy at paragraph 187 of the Payphone Reclassification Order is fully consistent with the text of the access charge rules themselves. Section 69.152 of the Commission's Rules, entitled "End User Common Line Charges for Price Cap Local Exchange

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<sup>10</sup>Comments of SNET at 6, comments of Bell Atlantic at 3.

<sup>11</sup>In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, et al., 11 FCC Rcd 20541 (1996).

<sup>12</sup>*Id.* at ¶ 187.

<sup>13</sup>*Id.*

Carriers,” states, in part, as follows:

... A charge that is expressed in dollars and cents per line per month shall be assessed upon providers of public telephones. Such charge shall be assessed for each line between the premises of an end user, or public telephone location, and a Class 5 office that is or may be used for local exchange service transmissions.<sup>14</sup>

Significantly, while the subscriber line charge rule (47 C.F.R. § 69.152) clearly and unequivocally articulates a requirement that subscriber line charges be assessed on payphone lines, the PICC charge rule (47 C.F.R. § 69.153) does not contain any requirement that PICC charges be assessed on IXC's serving payphone lines. Had the Commission intended to subject payphone lines to multiline business line PICC charges as it intended to impose multiline business line subscriber line charges on payphone lines, it could easily have written its rules to do so. It chose not to do so. Those commenting LECs who analogize PICC charges to subscriber line charges totally disregard the difference in the Commission regulations applicable to each.<sup>15</sup>

One of the questions asked by the Commission in the public notice and addressed by commenters is, which entity should be assessed PICC charges if those charges are applicable to

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<sup>14</sup>47 C.F.R. §69.152(a) (emphasis added).

<sup>15</sup>In this regard, Oncor respectfully urges the Commission to summarily reject several LECs' characterization of the issues in this dispute as being some sort of request for "special treatment" by payphone interests (see, *e.g.*, comments of Bell Atlantic at 1). Contrary to those self-serving statements, whether or not PICC charges should be imposed on IXC's providing 0+ service from payphones has nothing to do with exemptions from requirements or with special treatment. As explained in these reply comments as well as in Oncor's initial comments, nothing in the access charge rules mandates or even suggests that PICC charges are to be assessed on payphone lines, and nothing in the reports and orders adopting those rules indicates that the Commission intended such charges on IXC's providing 0+ service from public payphones.

payphones.<sup>16</sup> While Oncor does not believe that PICC charges are applicable to public payphone lines for the reasons expressed in its initial comments, several other commenters supported the suggestion that if PICC charges to be applicable to public payphone lines, that the charges should be imputed to the LECs' payphone units.<sup>17</sup> Upon reflection, Oncor finds considerable merit to the suggestion that PICC charges, if applicable to public payphone lines, be imputed to LEC payphone units. A persuasive case for this approach is set forth in the comments of Bell Atlantic. In arguing that the multiline business line rate should be applicable to payphone lines, Bell Atlantic states as follows:

The location owner is not the subscriber to the pay telephone line, the pay telephone provider is. And even if the location owner were the pay telephone customer, which it is not, it would still be a multiline customer to the extent the payphone is in addition to its regular business service.<sup>18</sup>

Bell Atlantic points out quite correctly that the pay telephone provider is the subscriber to a pay telephone line. In the case of LEC payphones, the LEC, through its payphone unit, is the subscriber. If the LEC's status as the subscriber and as a multiline business line customer is determinative of what level of PICC charge should be applicable to the lines associated with LEC payphones, it is equitable

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<sup>16</sup>Question no. 3 in the May 4, 1998 public notice is as follows:

Assuming that price cap LECs are permitted to assess PICC charges on public payphone lines, should the PICC be: a) charged to the presubscribed 1+ carrier; b) charged to the presubscribed 0+ carrier; c) imputed to the LEC's payphone unit as an end user; d) split evenly between the 1+ and 0+ PIC; or e) prorated among all IXCs that carry calls originating from a particular payphone each month? Commenters may also propose other alternative methods for allocating the public payphone PICC.

<sup>17</sup>Comments of MCI at 9, comments of AMNEX at 2.

<sup>18</sup>Comments of Bell Atlantic at 4.

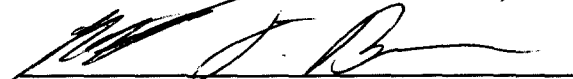
and appropriate that the LEC -- the multiline customer which is deriving revenue from its payphone business -- be subject to the PICC charges if they are to be assessed on those lines. It is simply not credible for Bell Atlantic or any other price cap-regulated LEC to assert that its payphone unit's status as a multiline business customer should dictate the level of PICC charges applicable to its payphone lines and then to have its regulated entity enjoy the windfall of PICC revenues based on the status claimed by its payphone affiliate. The clear solution is for the LEC's payphone unit to be assessed those charges.

### CONCLUSION

For all of the reasons stated herein as well as in Oncor's initial comments, Oncor respectfully reiterates its position that the Commission's access charge rules neither require, permit, nor contemplate imposition of PICC charges on public payphone lines. Alternatively, if the Commission determines that payphone lines are to be subject to PICC charges, then those charges should be imputed to the LECs' payphone units, and that the appropriate level of charges is the residential/single line business line rate.

Respectfully submitted,

OPERATOR COMMUNICATIONS, INC.  
d/b/a ONCOR COMMUNICATIONS, INC.



Mitchell F. Brecher

Fleischman and Walsh, L.L.P.  
1400 Sixteenth Street, NW  
Washington, DC 20036  
(202) 939-7900

*Its Attorneys*

Dated: June 2, 1998

## **CERTIFICATE OF SERVICE**

I, Antoinette M. Thorne hereby certify that on this 2nd day of June, 1998 a copy of the foregoing *Reply Comments of Oncor Communications, Inc.* was served to each of the parties listed below:

### **VIA HAND DELIVERY:**

James D. Schlichting  
Chief, Competitive Pricing Division  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, NW, Room 518  
Washington, DC 20554

International Transcription Service  
1231 20<sup>th</sup> Street, NW  
Washington, DC 20554

Albert H. Kramer, Esq.  
Michael Carowitz, Esq.  
Christopher T. McGowan, Esq.  
Dickstein, Shapiro, Morin  
& Oshinsky, L.L.P.  
2101 L Street, NW  
Washington, DC 20037-1526

Mr. Edward Shakin, Esq.  
1320 North Court House Road  
Eighth, Floor  
Arlington, VA 22201  
*Counsel for Bell Atlantic*

### **VIA REGULAR MAIL:**

Mr. William M. Waldron  
Boston Telecommunications Company  
1 Chace Road, #14  
Crossroad Commons Plaza  
East Freetown, MA 02717

Mr. Larry Kay  
National Operator Services, Inc.  
One Democracy Plaza, Suite 204  
Democracy Blvd.  
Bethesda, MD 20817

Mr. John H. Goida  
TeleConcepts Inc.  
P.O. Box 2324  
Princeton, NJ 08543

M. Robert Sutherland, Esq.  
Richard M. Sbaratta, Esq.  
Helen A. Shockey, Esq.  
BellSouth Telecommunications, Inc.  
1155 Peachtree Street, N.E., Suite 1700  
Atlanta, GA 30309-3610

Ms. Wendy S. Bluemling  
Director - Regulatory Affairs  
The Southern New England Telephone  
Company  
227 Church Street  
New Haven, CT 06510

Robert M. Lynch, Esq.  
Durward D. Dupre, Esq.  
Michael J. Zpevak  
Thomas A. Pajda  
SBC Communications, Inc.  
One Bell Plaza, Room 3003  
Dallas, TX 75202



John F. Raposa, Esq.  
GTE Service Corporation  
600 Hidden Ridge, HQE03J27  
P.O. Box 152092  
Irving, TX 75015-2092

Gail L. Polivy, Esq.  
GTE Service Corporation  
1850 M Street, NW  
Washington, DC 20036

Christopher M. Heimann, Esq.  
Counsel for Ameritech  
Suite 1020  
1401 H Street, NW  
Washington, DC 20005

Guy Longobardo, Esq.  
General Counsel  
AMNEX, Inc.  
100 West Lucerne Circle  
Suite 100  
Orlando, FL 32801

Alan Buzacott  
Regulatory Analyst  
MCI Telecommunications Corporation  
1801 Pennsylvania Ave., NW  
Washington, DC 20006

Cheryl A. Tritt  
Joan E. Neal  
Morrison & Forester, L.L.P.  
2000 Pennsylvania Ave., NW  
Suite 5500  
Washington, DC 20006-1888  
*Counsel for One Call Communications, Inc.*

Dana Frix  
Tamar E. Finn  
Kathleen L. Greenan  
Swidler & Berlin, Chartered  
3000 K Street, NW, Suite 300  
Washington, DC 20007

  
Antoinette M. Thorne